

The Amber Alert: the appropriate solution to preventing child abduction?

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Both recent and past reported crimes against children have led the public to demand further safeguards for children. Media broadcasts of a rash of child abductions, molestations and homicides have led to a nationwide moral panic concerning the safety of children. The Amber Alert is the most recent form of legislation that has resulted from the public's concerns over child molestation and abduction. This paper outlines the history and activation process of the Amber Alert, as well as the challenges and advantages experienced by the agencies involved. A review of the Amber Alert provides the reader with information about the recently enacted legislation and answers questions on its applicability at the municipal, state and federal levels. Exposing both the practical drawbacks and the advantages allows both practitioners and academics to decide whether the benefits outweigh the drawbacks.

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To most individuals, especially caregivers, nothing is as frightening as hearing the words "missing child" or "child molestation." It is at this point that every parent questions the safety of his or her children—is their well-being compromised by the bus driver, the babysitter, or even their religious leaders? Recently reported crimes against children have led the public to demand further safeguards for children. Media broadcasts of a rash of child abductions, molestations and homicides have created a nationwide moral panic concerning the safety of children.¹ The summer months of 2002 were informally coined "the summer of abduction" by the media;² it was nearly a daily occurrence to hear stories of children taken from their own bedrooms or front yards. The headlines surrounding the recent cases of Danielle Van Damme, Samantha Runnion, Cassandra Williamson, Erica Pratt, Elizabeth Smart, and even the more historic cases of Adam Walsh and Polly Klaas, have kept the public riveted at both the community level and the national level.³ This heightened media reporting results in the belief that the country is experiencing an epidemic of crimes against children. The media frenzy surrounding these publicized cases has created a "fear factor" among parents and caregivers, begging the question as to whether the incidence of child predation has increased or whether the nation's heightened sensitivity is a result of increased media reporting. Nonetheless, the nation is captivated by the fear of child abductions and molestations.⁴

Similar to the situation occurring in the 1990s with the sexual molestation and murder of Megan Kanka, parents have called on local politicians to develop legislation that protects their children. The crimes of child molestation and abduction are the most vilified in the media and the criminal justice system. Consequently, the offenders are subjected to some of the strictest forms of legislation, including community notification, registration, civil commitment, and chemical castration.⁵ The Amber Alert is the most recent form of legislation that has resulted from the public's concerns over

child molestation and abduction. The rapid enactment of the Amber Alert begs the question of whether the legislation was crafted with calm deliberation and an evaluation of the practical drawbacks it poses.⁶ This paper outlines the history and activation process of the Amber Alert, as well as the challenges and advantages experienced by the agencies involved. A review of the Amber Alert provides law enforcement officials with information about the recently enacted legislation and answers questions on its applicability at the municipal, state and federal levels. Examining both the practical drawbacks and the advantages allows practitioners and academics to formulate their own opinions, as opposed to being swayed by public discourse.

The history of the Amber Alert

In an effort to address the concern about abducted and sexually molested children, President George W. Bush signed the Amber Alert into federal law in April 2003. Accompanied by Elizabeth Smart and Amber Hagerman's mother, the President took action to protect America's children with one of the widest sweeping child protection acts in history.⁷ The Amber Alert, which stands for America's Missing: Broadcast Emergency Response, was named after Amber Hagerman, a nine-year-old who disappeared in 1998 in Arlington, Texas, while riding her bike.⁸ Although a neighbor was able to provide information on the crime, there was no system in existence that could disseminate the information to local residents. Much to the outrage of community members and family, Amber Hagerman's body was discovered four days later. In an effort to prevent similar occurrences, the Dallas/Fort Worth Association of Radio Managers collaborated with the local law enforcement agencies in Texas to develop the warning system presently known as the Amber Alert.⁹

Plan of action

The Protect Act of 2003, informally known as the Amber Alert, is a comprehensive package whose main goal is the swift transmission of information and the ultimate safe return of abducted children. The foundation of the alert system is embedded in the belief that as more time elapses, the likelihood of recovering a missing child decreases. Consequently, the notion of "beating the clock" is of primary importance.¹⁰ While the Amber Alert design offers slight deviations between regions and states, most areas follow a standardized plan of action. The Amber Alert system is set into motion when a child is abducted and there is enough information known about the victim, the offender and the vehicle. In order for an Amber Alert to be issued, there must be (a) a confirmation by the authorities that the child has been abducted; (b) a belief by law enforcement authorities that the child is in imminent danger; and (c) a substantial body of information on the offender, victim and vehicle.¹¹ If these three criteria are met, bulletins are posted with the relevant information and communicated via changeable message signs on highways (CMS), radio, television and the Internet.¹² The Emergency Alert System is used to disseminate the information and alert the public, similar to situations involving dangerous weather conditions.¹³ In addition, since August 2002 the website www.codeamber.org has provided information via tickers to the approximately 88,000 websites that have joined them.¹⁴ Collectively, these various modes of communication are processing information and sending it out to millions of individuals in the matter of minutes it takes to enter the data. Both on the larger national level as well as in local communities, thousands of individuals are on the lookout for missing children. Presently, 46 states have implemented the Amber Alert notification system (the exceptions are Alaska, Hawaii, North Carolina and Wyoming), with an additional 16 regional plans and 31 local plans. These plans have been

credited with the recovery of 113 children since their earliest inception in 1997.¹⁵

Implementation plan

The Amber Alert is a voluntary, joint effort with a number of collaborating agencies. The United States Department of Transportation, the Department of Justice, the Office of the Attorney General, the Federal Bureau of Investigation, and local and state law enforcement departments are involved to some degree with the implementation of the national notification systems.¹⁶ According to the National Amber Alert Network Act of 2003 (108th Congress, 1st Session, S. 121), the Attorney General is required to assign an individual as the national coordinator, accordingly titled the Amber Alert Coordinator of the Department of Justice. The primary duty of the coordinator is to streamline the implementation among agencies and across state lines.¹⁷ The essential factor in the successful implementation of an Amber Alert program depends upon a formalized set of procedures that agencies are required to follow when a child goes missing. While reasonable variations are acceptable, it is requested that the procedures correspond with the recommendations of the National Amber Plan Program.¹⁸ To this end, decisions need to be made concerning the criteria used for displaying information, the clear identification of a responsible agency, a length of time for display, geographic location and ranges for display, format and content of messages, and the possibility of potential problems, including traffic jams and accidents.¹⁹

The Protect Act of 2003 allocated a substantial amount of money for the local, regional and statewide funding of notification systems. In 2004, approximately \$20 million will be appropriated to the Department of Transportation to provide grants to states willing to develop or enhance highway systems for the purpose of the recovery of abducted

children.²⁰ Various funding will also be supplied to law enforcement and broadcasters for increased training on the dissemination of information.²¹

Acceptable purposes for an application of funding

1. The development of general policies and procedures for the use of highway signs.
2. The development of the format or content for displaying messages.
3. The coordination of regional, local and statewide plans.
4. The development of increased communication between agencies.
5. An improvement in the dissemination of information to travelers.
6. The hosting of training and guidance programs for the staff.

SOURCE: Peters, 2003.

An attempt to fight more than child abductors?

The Amber Alert bill was revived after the family of recovered abduction victim Elizabeth Smart pleaded for its passage. Widely publicized successes from individual state implementations of the Amber Alert paved the way for Congress to take a second look at the legislation.²² Amended in late March 2003, the bill finally went before Congress and received a 400:25 vote in the House and a subsequent Senate vote of 98:0.²³ Although the new federal law includes the widely supported development of child abduction alert systems, broadly known as the Amber Alert, it also includes a seemingly independent Justice Department addition referred to as the Feeney Amendment.²⁴ Named after Florida Republican Rep. Tom Feeney for his initiative, the Feeney Amendment seeks to reduce sentencing powers and discretion of judges by eliminating the power to downwardly depart from sentencing guidelines for sexual offenses and crimes against children.²⁵ Essentially, judges will be limited in their ability to stray from the sentencing guidelines for these

offenders. Additionally, the Feeney Amendment carries a long list, as follows, of provisions that guide the treatment and sentencing of sexual and child offenders:

Additional Feeney Amendment provisions

1. The prohibition of supplying or soliciting materials considered to be child pornography. Special attention within this provision is paid to the transmission of computer generated child pornography. Additionally, this provision addresses a previous 1996 Supreme Court decision concerning child pornography.
2. The denial of pretrial release to defendants charged with crimes against children, particularly child abduction and child sexual abuse.
3. The elimination of the statute of limitations governing a five-year limit to prosecution for child sex crimes. The alleged perpetrator can now be charged with child abduction or child sexual abuse for the life of the victim.
4. The mandate of life imprisonment for twice-convicted child sexual offenders.
5. The amendment to the original five-year supervision of released sexual offenders. Federal judges are now allowed to order supervision for the life of the sexual offender.
6. It is deemed illegal to move a child outside of the United States to avoid child custody battles.
7. The allowance of federal wiretapping in cases of alleged sexual exploitation of children.
8. It is deemed illegal to utilize a deceptive domain or user name on the computer if it results in children or adults unexpectedly viewing pornography.
9. The broadening of the National Sex Offender Registry to include convicted child pornographers.

SOURCE: "Amber Alert Provisions," 2003.²⁶

Child safety: a federal priority and an irrefutable value

The Amber Alert legislation offers a number of practical values to both the community and the legislature. In order to

enumerate these many benefits, it is necessary to examine it separately from its more controversial appendage, the Feeney Amendment. To this end, the benefits of the Amber Alert are here discussed as social values, while the benefits of the Feeney Amendment are discussed as practical values.

Social values

Embedded within the relatively simple and inexpensive Amber Plan is the enhanced ability to save the lives of missing children. This is evidenced by the Amber Alert's present record of having recovered 113 children from their abductors.²⁷ The key to these recoveries has been the ability of the Amber Plan to swiftly mobilize various agencies and allies upon notice that a child, with a case that fits the three criteria, is reported missing. The celerity of action characterized by the Amber Alert provides the fundamental element to aid in the time-sensitive recovery of abducted children. While providing a swift response, which ultimately increases the possibility of saving a child's life, the Amber Alert Plan also provides a sense of security to parents and caregivers.

A second social value is established by the manner in which the Amber Alert encourages community involvement and the maintenance of social control. Public safety is purportedly achieved "through the sharing of information and education" by community members, fundamentally relying on the principle "The more eyes, the better."²⁸ Moreover, by way of an Amber Alert, law enforcement officers actively recruit the public's attention and aid in identifying offenders. News broadcasts supply identifying information on a fleeing abductor and encourage the public to call in any sightings. Similar to Megan's Law, the Amber Alert relies upon the public as a means of maintaining the safety of the community as they "actively participate in reclaiming the safety of their neighborhoods, cities and towns."²⁹

A third social value is demonstrated by the promotion of collaboration within and among agencies that otherwise

might not have contact. In order to activate an Amber Alert, local and state police departments need to be in contact with their local departments of transportation and emergency broadcasting systems. These communications facilitate the exchange of information and mutual cooperation between individuals or agencies with previously competing responsibilities. The transmission of Amber Alert information will now become a shared responsibility and promote stronger relationships among these agencies.

**Practical
values**

Its proponents believe the Feeney Amendment is the essential tool for fighting predators who prey on children. President George W. Bush warned that kidnappers and child molesters should fear their imminent capture as he signed one of the widest sweeping child legislation acts in history.³⁰ Consistent with the public's belief that sexual offenders will not stop offending, even after an initial incarceration, the underlying foundation of the amendment is embedded in the belief of prevention of reoffending through social focus, vigilance and increased punitiveness. The Feeney Amendment sends the message to child predators that society is tough on crimes against children.

The second practical value is the increase in the predictability of sentencing of sexual offenders. The standardization of sexual offender sentences may promote a more balanced judicial system. According to some, the Feeney Amendment will also provide for an impartial review of all downward departures. Supporters claim that together, the standardization of sentences and the review of downward departures will provide a systematic basis for lengthening the sentences of sexual offenders. It is assumed that these actions will result in decreased sexual recidivism and increased child safety.

Amber Alert: unavoidable operational and conceptual obstacles?

While as a concept the Amber Alert is reasonable and fully supported by most individuals and public agencies, a number of existing issues may affect the implementation, operation and theoretical basis for the Amber Alert and the Feeney Amendment. For ease in interpretability, these concerns are separated into operational concerns and conceptual concerns.

Operational concerns

The key issue concerning the basic capability of the Amber Alert notification system is that in the majority of missing-child cases, alerts are not issued for children who have voluntarily run away or who have been abducted by family members. Together the cases of runaway children and family-abducted children represent the clear majority of children considered *missing*. The missing children determined eligible for an Amber Alert—children abducted by non-family individuals—represent only 7.3% of all missing children.³¹ More specifically, with only 115 children “stereotypically kidnapped” on an annual basis, a child has approximately a one-in-a-million chance of falling victim to this type of abduction.³²

While it seems only logical to refrain from enacting Amber Alerts for family abductions because of their high frequency, it also raises concerns over the extent of the legislation’s efficacy, because it may not be confronting the true nature and extent of child abductions. By recognizing only non-family abductions, authorities are making an unofficial statement that cases of family child abductions are less serious or of a secondary priority. The Amber Alert, by pure coincidence, may actually serve to promote a false sense of security within communities and may create a hierarchical system of ranking child abductions.

Moreover, the majority of children abducted by family members are young; almost 50% are only six years old or

younger, while most victims of non-family abductions are teenagers.³³ Because the Amber Alert can be issued only for children under the age of 18, and the majority of non-family abduction victims are teenagers, the pool of potential cases is further narrowed. This undermines the community perception that the Amber Alert is protecting younger, more vulnerable children. In addition, it raises the concern of whether the Amber Alert is helpful in protecting the children most in need of its safeguards.

Furthermore, technical difficulties to the Amber Alert notification system may hinder a seamless implementation or continuation of already existing systems. These difficulties include the inability of many message signs to post the same message across various regions; the limited placement of changeable message signs, as most signs are located on large urban freeways; the staffing restrictions of transportation departments during off hours, which may affect the transmission of information; and last, the notification system requirement that a great deal of information about the victim, the alleged perpetrator and the vehicle be available for immediate dissemination.³⁴

An operational challenge facing the Feeney Amendment concerns the required life imprisonment or lifetime supervision of sexual offenders. The Justice Department reported that between 1980 and 1994 federal and state prison populations had tripled to approximately 1,500,000 inmates.³⁵ Since 1994 the federal and state prison populations have passed the two million prisoners mark, the largest number of offenders ever held in institutions in the United States.³⁶ Although the nation's prison and jail populations are presently operating at a level over their allowable capacity, the Feeney Amendment seeks to further stress the already bulging seams. The Feeney Amendment provisions become unachievable and unrealistic if the institutions are not provided commensurate funding and training for the facilities and their employees.

Conceptual concerns

The conceptual concerns of the Feeney Amendment are more extensive and significant than the operational difficulties. The Feeney Amendment is characterized by two major concerns: the underlying theory of higher recidivism rates among sexual predators, and the elimination of judicial discretion.

Despite the highly sensationalized information circulated by the popular media and many public officials, the rate of sexual victimizations has been falling in recent years. The Bureau of Justice reports a decline by 56% from 1993 to 2001 and by 8% between the years 2000 and 2001.³⁷ Consistent with this finding, the majority of methodologically sound research reports that sexual offenders do not reoffend at the level perceived by the general public.³⁸ One of the most comprehensive examinations is contained in a recent (2002) U.S. Department of Justice³⁹ report that tracks various offenders post-release.⁴⁰ This study found that sexual offenders had among the lowest recidivism rates of all offenders released, with 11.2% of rapists committing a new sexual offense after their release from prison.⁴¹ Furthermore, studies examining recidivism rates of sexual offenders within particular institutions have found low recidivism rates for sexual offenders, approximately 11% recidivism, as well as more comprehensive meta-analytical reviews reporting 12% recidivism among released sexual offenders.⁴² While slight variations appear in the levels of reported sexual offending recidivism, the vast majority of low reported recidivism rates do not change the perceptions of the concerned public. For the most part, the public envisions sexual offenders as predators prevented from reoffending only by the operation of current legislation, including both Megan's Law and the Amber Alert. The propagated theories of highly recidivating sexual offenders pave the way for child safety legislation, but they may also create the counterproductive result of misleading the public and misdirecting funds.⁴³ The public is led to believe its children are safe with this legislation in place, but the research illustrates that the majority of sexual offenders are not reoffending, elucidating that already

convicted sex offenders should not necessarily produce the most concern among community members.⁴⁴

The final concern involves the reduction of judicial discretion and the alleged reasoning for this action. Publicly opposed by the United States Judicial Conference and the American Bar Association, the Feeney Amendment seeks to reduce judicial discretion among the federal judiciary by limiting downward departures in cases of sexual offenses. Chief Justice William Rehnquist, known for a tougher stance on crime, believes that the Feeney Amendment "... would seriously impair the ability of courts to impose just and responsible sentences."⁴⁵ The inability to downwardly depart in cases of sexual offenses deprives judges of their responsibility and renders their experience irrelevant.⁴⁶ It has been argued that the act of reducing judicial discretion and mandating a strict adherence to sentencing guidelines sends a message that appointed judges may not be needed to preside over sentencing because that ministerial responsibility could be served by any bureaucrat.⁴⁷

While the limit on downward departures is beleaguered with conceptual problems and partisan arguments, its more practical link to the overpopulation of the nation's prison system cannot be overlooked. Constriction of judicial discretion will likely have a detrimental effect on prison populations. In a time when legislatures, law makers and researchers are struggling to provide reasonable solutions for prison overcrowding, the Feeney Amendment may prove to be counterproductive to those efforts.

Conclusion

Currently 46 states have some form of the Amber Alert Plan.⁴⁸ Although the program is still voluntary, it is expected that each state will have some variation of the notification system within a reasonable amount of time (National Center for

Missing and Exploited Children, phone interview, 5/22/03). Since 1996 the states that have implemented their own versions of the Amber Alert system have achieved an invaluable record of accomplishments, saving over 113 lives.⁴⁹ The key to these recoveries has been the ability of the Amber Plan to swiftly mobilize various agencies and allies upon notice that a child whose case fits the criteria is reported missing. The swift action characterized by the Amber Alert provides a fundamental element to aid in the time-sensitive recovery of abducted children. Presumably, once all 50 states have successfully implemented the notification system, and information is transmitted across state lines within minutes, the level of efficacy will be increased.

While child advocacy organizations are supportive about the enactment of the legislation, it has been recognized that a nationwide program is only as good as the state systems that connect those programs.⁵⁰ In other words, in order for a seamless transmission of information to occur across state lines, individual states must be proactive in implementing and executing notification and recovery systems. As time passes, it is expected that alert systems will become more advanced and the majority of practical challenges will be eliminated. However, the theoretical drawbacks may present more of a challenge. Ultimately, it needs to be determined whether "the ends justify the means."

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Helpful links: Polly Klaas Foundation, www.pollyklaas.org; Child Alert Foundation, www.childalert.org; Child Find of America, www.childfindofamerica.org; National Center for Missing and Exploited Kids, www.missingkids.com.

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